



Town of Richmond

105 Old Homestead Highway Richmond, NH 03470

P: (603) 239-4232

www.richmond.nh.gov

WD

January 27, 2022

Two Public Hearings

Present: Chairman William Daniels, Selectman Douglas Bersaw, Selectman Andrew Wallace, Attorney Joseph S. Hoppock, ESQ and Town Administrator Susan Harrington.

Public present: approximately 15 residents

Hearing opened at 7:01 p.m.

First Hearing

Chairman Daniels called the hearing to order at 7:01 pm. Chairman Daniels announced that there are Two Public Hearings being held tonight. The first hearing is in regard to RSA 33:8-a,I obtaining a bond for bridge replacements and the second hearing will be in regard to RSA 231:28, road layout petition submitted by Lauren C. Shearer. The second hearing will immediately follow the first hearing.

First Public Hearing: RSA 33:8-a,I obtaining a bond in the amount of \$2,000,000 for the replacement of Tully Brook Road over Tully Brook Bridge #155/066 and Whipple Hill Road over Roaring Brook Bridge #065/083.

Chairman Daniels turned meeting over to Selectman Douglas Bersaw. Selectman Bersaw explained to the audience that the State of New Hampshire tests bridges every year. The State of New Hampshire considers a crossing with a width of 10 feet a bridge. The Tully Brook Bridge #155/066 and Roaring Brook Bridge #065/083 have been red listed by the State of New Hampshire. According to the State the two bridges are red listed due to decay. The Whipple Hill Road over Roaring Brook Bridge #065/083 is an old steel bridge approximately 80 years old. The Tully Brook Bridge over Tully Brook #155/066 is a 15-foot-wide culvert that has decayed to the point it could collapse.

The Town has been putting funds away for years in the Bridge Replacement Fund for these two bridges. The State of New Hampshire will pay 80 % of cost leaving the Town with the remaining 20%. One problem is that the Town needs to put up the money first. The funds are needed for, but not limited to, the bridge design, engineering study, environmental testing, environmental permits, etc. The funds will not be given to us by the State until the bridge is built.

The intention was to replace Whipple Hill Bridge over Roaring Brook #065/083 first, but the Town was informed by the New Hampshire Department of Transportation that the Tully Brook Bridge over Tully Brook #155/066 culvert is in extreme decay. The NHDOT advised the Town

to down grade the weight limit on the bridge. A temporary bridge would not be possible as it would be in the way of building the new bridge.

In order to replace the bridges, the Town will need to take out a \$2,000,000 bond. After the first bridge is completed, the Town will have the money to finish the second bridge. The Town will withdraw from the bond as needed. Bids will go out to builders in New England to build the bridge and the bids will go out in the spring of 2022.

Resident Rosti Eismont asked the Board how many people/homes did the Tully Brook Bridge service? Bersaw estimated about a dozen. Mr. Eismont asked the same question about Whipple Hill Road over Roaring Brook Bridge service? Bersaw estimated 20 or 30 houses.

The question was asked why doesn't the Town build the bridge? Have the Selectmen explored that idea? Did we do studies on our own? Chairman Daniels commented that it was discussed and Selectman Wallace added that the bulk of the price is the design.

A question came up regarding the Tully Brook Bridge being a culvert and not a bridge. Resident Fran Heap asked why the Town wouldn't replace a culvert with a culvert and a bridge with a bridge? Bersaw responded the State considers it a bridge because it is greater than 10 feet.

Resident Loyd Condon asked the Board if we take out the bond, what does the State pay? 100%? Board answered no, still only 80 %. Mr. Condon asked who the construction firm we are working with is. Board answered Quantum Construction Consultants. Mr. Condon asked where we would obtain the bond from? Bersaw responded that we would shop around and commented on low interest rates.

Resident Jeani Eismont asked the Board why both bridges cost the same at \$400,00 each when one bridge is larger than the other? Bersaw responded the costs are similar due to other factors such as but not limited to a different type of ground for example.

Resident Rosti Eismont stated to Selectman Bersaw that he thought Selectman Bersaw should recuse himself since he lives on Tully Brook Road. Selectman Bersaw asked Attorney Joseph Hoppock if he thought he should recuse himself, Attorney Hoppock did not find a reason for Selectman Bersaw to recuse himself.

Resident Richard Drew addressed the audience stating the road has to be two lanes for safety purposes.

Resident Fran Heap asked the Board what happens if we do not get reimbursed by the State. Bersaw responded that so far, they haven't stiffed us yet and no one can predict what will happen.

No further questions from the audience.

Bersaw moved; Wallace 2nd; bond hearing adjourned at 7:27 pm

Second Hearing opened at 7:28 p.m.

Second Hearing

Chairman Daniels announced the opening of the second public hearing at 7:28 p.m. Pursuant to RSA 231:8 Mr. Lauren Shearer submitted a Road Layout Petition. The Petitioner, Mr. Lauren Shearer was not present for the public hearing. Mr. Shearer was notified of the Public Hearing by Certified Mail which he signed for on December 23, 2021. The petition is to layout a Class V Highway over a portion of Bowker Road. Chairman Daniels handed the meeting over to Attorney Joseph S. Hoppock.

Attorney Hoppock started with acknowledging the incorrect RSA has been used in Mr. Shearer's petition. Mr. Shearer states the Road Layout Petition is stated as pursuant to RSA 231:28. According to Attorney Hoppock, the correct RSA is 231:08 which reads as "Selectmen of a town, upon petition, may lay out any new class IV highway not financed in whole or in part with federal aid highway funds, and class V or VI highway or alter any such existing highway within their town for which there shall be occasion."

Attorney Hoppock advised audience that since the Petitioner was not present, the hearing will continue as pursuant to RSA 231:8.

Attorney Hoppock read RSA 231:8 which provides that: "Selectmen of a town, upon petition, may layout any new class IV highway not financed in whole or part with federal aid highway funds, and Class V or Class VI highway, or alter any such existing highway within the town for which there shall be an occasion."

Attorney Hoppock stated that upon receipt of a petition of this nature requires the Board of Selectmen's responsibility to determine if there is an occasion for this road. If an occasion exists, or is found the Board will proceed with a betterment analysis per RSA 231:38. That determines the evaluation of cost especially if it is one tax payer vs several tax payers. First the petition must pass the occasion test.

To first pass the occasion test the Board will need to review the location. We have to ask ourselves to balance in public interest against the rights of the affected landowners. Attorney Hoppock asked the audience if Mr. Raymond was present.

Mr. Raymond responds with a yes. Attorney Hoppock advises Mr. Raymond that he will have a chance to speak.

Attorney Hoppock stated if the rights of the affected landowners outweigh the public interest then there is no occasion. If the public interest justifies land taking by eminent domain without the affected landowner's consent. To take it further, a second step would be a balancing of public interest in the layout against the financial burden that the layout would impose on the Town. The public interest factors include but are not limited to, the extent of public necessity-is it urgent or a

mere convenience? Those are the questions that we need to ask ourselves in term of the balancing. We have to ask and answer:

- What is the degree of the proposed road's integration into the Town's existing road system?
- Will the proposed road provide any improvement to the convenience of travel to the general public (that it, anyone using the road, not just the tax payers or people who will live on the road)?
- Will the proposed road ease existing traffic flows within the Town?
- What is the degree the proposed road will improve accessibility for fire, emergency and police services and will it safely facilitate the transportation of school children to and from school?
- Will the proposed road benefit a significant portion of the Town population or only a small number of taxpayers?

The focus will be on the occasion tonight. Once all of the evidence of public interest (convenience and necessity), financial burden and the rights of the affected landowners has been heard the Select board will adjourn the meeting to take a view of the proposed road. The Board has decided on Saturday, February 12th at 10:00 am. The site walk will be opened to the public; however, no public comments will be taken. Once the site walk has been completed the Board will reconvene the public hearing to deliberate and vote. Attorney Hoppock asked if there were any questions. Selectman Bersaw asked wouldn't we start with Mr. Shearer's presentation, he is the one that called this meeting and he is responsible for presenting his case? Attorney Hoppock responded that he recommends moving forward and to have our own occasion analysis using the knowledge of the public in attendance and Select board. Also, the abutting landowners are present and will be given a chance to speak.

Attorney Hoppock spoke regarding the 2018 lawsuits that Mr. Shearer had taken against the Town of Richmond and landowner Ronald Raymond. In 2018 the Supreme Court granted an easement to Mr. Shearer. The court defined the easement at 16 feet wide. Attorney Hoppock stated that the easement is not the dimension of a road. He referred to the guidelines in the Richmond Subdivision Regulations that state a road that has traffic of 0-50 vehicles a day requires a road that is 18 feet wide with 2 feet wide shoulders and a ditch line to center line of 50 feet.

Attorney Hoppock asked to hear from the land owners. Mr. Ron Raymond who lives at 552 Whipple Hill Road and previously at 580 Whipple Hill Road when the lawsuit between him and Mr. Shearer started. Raymond had a surveyor survey the property before he sold 580 Whipple Hill Road. Raymond states that Mr. Shearer has the same rights as he did when he bought the property in 2004. Road was discontinued in 1898 and property given back to the land owners. This was before roads were classified. Mr. Raymond states that the easement Mr. Shearer has does not include rights for commercial vehicles or utility rights. Raymond states Mr. Shearer has never improved on his land.

Attorney Hoppock asked Mr. Raymond to tell us why he does not think his land should be taken by eminent domain. Mr. Raymond responded that he and his family enjoy the rural area. They

would not like a Class V road especially for one house. He feels this would be a financial burden on the town and road agent.

Chairman Daniels asked Mr. Raymond if the common law easement addressed the topic of traffic. Mr. Raymond stated his lawyer advised him that Mr. Shearer's rights are the same as he always had.

Mr. Raymond stated Mr. Shearer has erected a mailbox and created his own street number. Mr. Raymond commented that it is confusing to people and the Winchester Post Office will not deliver to that mailbox as the address is not valid. Mr. Raymond would like to see if removed. Mr. Raymond mentioned that there was a gate on the property which existed before he bought the property. Mr. Raymond states the landowner, Mr. Anderson, who owns the other cabin by Mr. Shearer's property likes the gate as it kept people from breaking into his cabin and also from dumping junk. Mr. Shearer doesn't agree with the gate now that he has the common law easement. Mr. Raymond has put up signs, would like to see a better gate back up. There were no problems when the gate was up. He states most of the ATV riders have learned over the years the way to get to the trail from Massachusetts. Someone from the crowd asked if there was access to Mr. Shearer's land another way. Mr. Raymond stated yes, through discontinued roads.

Jeff Brewoff stated you cannot get in that way. Mr. Raymond stated you could go through Barrus Road. Mr. Raymond pointed out that he has wetlands on his property and a stream that runs out on the road and a seasonal vernal pool. He mentioned an issue with a culvert by Mr. Shearer's property on discontinued Bowker Road and was curious if that was part of his proposal. Mr. Raymond asked if there would be a turn around by Mr. Shearer's property, Attorney Hoppock stated Mr. Shearer wanted to use the Nash property as part of his turnaround.

Chairman Daniels asked Mr. Raymond if he saw any benefit to the Town if the road petition is approved? Mr. Raymond responded no. Attorney Hoppock asked how much Mr. Raymond thought he would want if the Town took an 18-foot-wide spot of his property? Mr. Raymond was unsure of a figure. He states he would sell everything and move. Mr. Raymond states he enjoys hiking the discontinued road, if the Class V road was laid out it his property would lose value to him. Mr. Raymond sees no public benefit to this road at all.

Ms. Auvil who resides with Mr. Raymond added that they were sued by Mr. Shearer in 2008 and 2018.

Attorney Hoppock states Mr. Shearer isn't there to provide a rebuttal.

Mr. Powderly who is an abutter asked the Board if the 16-foot road would take his property? Selectman Bersaw and Attorney Hoppock stated yes, and it would be more because the road would need to be 18 feet wide, not 16 feet wide. Mr. Powderly stated that sucked.

Richard Drew addressed the Board and Attorney Hoppock by stating he is a land surveyor. Drew addressed that in some areas of the proposed road is sloped and it will take more than 16 feet from abutters. There is also a substandard culvert that would need upgraded.

Mr. Ronald Minor who currently owns 580 Whipple Hill Road, the property that contains Mr. Shearer's common law easement addressed the Board and Attorney. Mr. Minor states that would require the Town to take approximately 20 feet of his property. He does not want the road, he enjoys the peace and quiet which is why he moved there.

Selectman Bersaw asked if there were any other abutters? No response. Selectman Bersaw asked if anyone would like to speak to address the situation from the perspective of an individual or the whole town.

Mr. Rosti Eismont addressed the Board and Attorney what it would cost the Town to build the road. Attorney Hoppock had estimate from July of 2021 for \$86,000. Attorney Hoppock pointed out that due to inflation, he would estimate at \$86,000+. The price would go up, not down. He states Mr. Shearer had provided an estimate that would cost the Town approximately \$13,860.00. Chairman Daniels stated this is what he does for a living and you cannot build a road for that price. A voice from the audience asked if those were the prices for a Class V road, the answer is yes. And if the Town would have to maintain the road, the answer is yes.

Mr. Drew spoke about Current Use.

Mr. Lloyd Condon addressed the Board and Attorney stating he agrees the road will be more than \$13,860.00. He also spoke of land condition and building lots.

Selectman Bersaw addressed the audience to ensure that everyone understands that Mr. Shearer is responsible for meeting his burden of proof to back up his petition. The Selectmen are doing what they are required by holding the hearing and presenting the petition to the Town. Mr. Shearer did not come to the hearing. The Board was given a petition but nothing to back it up.

Attorney Hoppock reiterates that it is Mr. Shearer's responsibility to provide burden of proof and burden of persuasion. Attorney Hoppock suggests we get back to the public interest topic.

Mr. Eismont stated that he moved to Whipple Hill Road 35 years ago and the traffic has become beyond peace and quiet. He is not in favor of the road.

Attorney Hoppock asked the audience—Does anyone see any improvement or convenience of travel for the general public for this road? Audience responded with no.

Attorney Hoppock asked the audience—Does anyone see an argument for improving the accessibility of ambulance, fire and police? Audience responded with no.

Attorney Hoppock asked the audience—Whether the proposed road will benefit a significant portion of the population or only a small number of taxpayers. Audience responded with no.

Attorney Hoppock stated he sees no evidence of the construction cost for ongoing maintenance except that presented by the Town.

Resident Ms. Fran Heap addressed the Board and Attorney Hoppock stating Mr. Shearer was abusing the Nash Lot in this petition. Shearer states the Nash Lot will be used as a "T" turnaround. Ms. Heap points out that the Mr. Shearer doesn't own the Nash Lot and it was never a road or turnaround. She states that if the petition is granted it would violate of RSA 474:40. Attorney Hoppock agreed.

Attorney Hoppock asked if anyone sees an urgency for the road? Audience answered no.

Mr. Minor asked if the Town could put the gate back up? He is seeing vehicles going down the discontinued road. The Town has no say, it is between the landowners.

Mr. Drew asked about the easement that was granted by the Supreme Court. Chairman Daniels states that he was granted a 16-foot easement for ingress and egress.

Resident Mr. Alan Conklin stated he was not in favor of the road petition.

Resident Kim Mattson asked the Board if they had agreed to merge the Barber and Nash Lots for Mr. Shearer as he states they did during a May 10, 2021 Selectmen Meeting. The Board responded that Mr. Shearer has his own way of interpreting things.

Resident Mr. Condon stated the landowner must give permission for the site walk. The landowner stated he gives the Town permission to access his property for the site walk.

Selectman Bersw made a motion to adjourn, the hearing until the site walk on Saturday, February 12th at 10:00 a.m. Mr. Shearer will be responsible for having the road open. The site walk is also opened to the public. Selectman Wallace 2nd the motion.

Public Hearing adjourned at 8:12 p.m.

Respectfully,

Susan Harrington

